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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,561	10/23/2001	Michael T. Beyerle	9D-EC-19792/064853.034	7740

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EXAMINER

SANTOS, PATRICK J D

ART UNIT	PAPER NUMBER
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2171

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DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,561

Applicant(s)

BEYERLE ET AL

Examiner

Patrick J Santos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Notice to Applicant: First Office Action stated that Claims 16, 17, and 20 were rejected as unpatentable under 35 USC 103. However, the paragraphs containing the corresponding arguments were erroneously omitted in the First Office Action. This office action has restored the arguments to reject Claims 16, 17, and 20 in paragraphs 5 and 6, and reflect the claims as amended. Due to the addition of these arguments, this office action is NON-FINAL. Office and Examiner apologize for the inconvenience.

Specification

2. Objections to the specification are addressed by Applicant's amendment filed 15 March 2004. Accordingly, objections to the specification are withdrawn.

Claim Rejections - 35 USC § 112

3. Amendments to Claims 3-5, 9, 14-16, and 22 address 35 U.S.C. § 112, 2nd paragraph rejections from the First Office Action.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-8, 10-19, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,167,383 issued to Henson (hereafter Henson '383) in view of the EBuild

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web site as of November 12, 2001 (hereafter EBuild '01) and in further view of in view of U.S. Patent No. 6,070,149 issued to Tavor et al. (hereafter Tavor '149), and moreover in view of "The 1993 ASHRAE Handbook – Fundamentals, I-P Edition" published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Inc. (hereafter ASHRAE '93). The archived EBuild web site is available from the WAYBACK MACHINE (TM) service from <http://web.archive.org> at:

<http://web.archive.org/web/20011122064515/ebuild.com/guide/ProductSpecifier.asp?CatCode=212>.

Claims 1 and 11:

Regarding Claim 1, EBuild '01 is a web site that a computer-based method and a system for providing guidance to a purchaser for selecting an appliance. The method provides for on-line database search on venting appliances, specifically "Exhaust Vents/Range Hoods" (EBuild '01: Screen Shot 1, Right Pane Title). Moreover, the guidance recommendations in said method and system regard a venting structure for the appliance and further the appliance related requirements are venting requirements data, for example "Venting System" in which choices include "Ductless" and "Ducted" (EBuild '01: Screen Shot 1, List Box Titles). Furthermore, the method and system provides for a wizard-like interface, and parameters are vent parameters indicative of the physical constraints, for example "Type" in which choices include "Island Canopy," and "Slide-Out Vent Hood" (EBuild '01: Screen Shot 1, List Box Titles).

However, EBuild '01 does not explicitly teach:

- Providing a database for storing appliance-related information including a respective identifier for each appliance, the appliance-related information further including requirements data for each appliance;

- Configuring a wizard to provide a set of prompts over a communications network to elicit information from the purchaser regarding a respective appliance of interest to the purchaser, and parameters for the structure of the appliance;
- Accessing the database in view of the information supplied by the purchaser;
- Processing the information supplied by the purchaser relative to the requirements data for the appliance of interest to determine a recommendation that takes into account physical constraints to the purchaser regarding suitability of the venting structure relative to the appliance of interest; and
- Transmitting the recommendation that takes into account physical constraints to the purchaser regarding the selection of the appliance and/or structure.

Henson '383 teaches a computer-based method for providing guidance to a purchaser for selecting an appliance (Henson '383: col. 2, lns. 62-63) by providing the means for customers to configure their appliances over the Internet (Henson '383: col. 2, lns. 64-67), said method including:

- Providing a database for storing appliance-related information including a respective identifier for each appliance, the appliance-related information further including requirements data for each appliance (Henson '383: col. 2, ln. 65; col. 3, lns. 21-29; col. 17, lns. 21-25);
- Configuring a wizard to provide a set of prompts over a communications network to elicit information from the purchaser regarding a respective appliance of interest to the purchaser, and parameters for the structure of the appliance (Henson '383: col. 17, lns. 9-14);

- Accessing the database in view of the information supplied by the purchaser (Henson '383: col. 17, lns. 35-43);
- Processing the information supplied by the purchaser relative to the requirements data for the appliance of interest to determine a recommendation regarding suitability of the venting structure relative to the appliance of interest (Henson '383: col. 17, lns. 35-43); and
- Transmitting the recommendation to the purchaser regarding the selection of the appliance and/or structure (Henson '383: col. 17, lns. 35-43).

Henson '383 does not explicitly teach that the recommendation takes into account the physical constraints.

Tavor '149 teaches indicating if attributes in the recommendation, based on parameters supplied by the purchaser, is within a predefined acceptable range relative to at least one model for the appliance of interest (Tavor '149: col. 50, lns. 42-47).

ASHRAE '93 teaches "a duct fitting database, ... , which includes 228 round and rectangular fittings with the provision to include flat oval fittings, ... , with the capability to be linked to duct design programs" (ASHRAE '93: p. 32.11, col. 1, lns. 26-29). This database provides the knowledge base for physical parameters matching those supplied by the purchaser. In summary, ASHRAE '93 provides standard methods and data to calculate venting pressure, and the both frictional and dynamic pressures losses. The process to calculate the total pressure loss includes the summation of pressures losses from friction (calculated from length of venting), and pressure losses from fittings (calculated by shape and angling of fittings) (ASHRAE '93: p. 32.1-40).

It would have been obvious to a person having ordinary skill in the art to apply the customer configuration invention of Henson '383 to the web page of EBuild '01. Specifically would have been obvious for a person having ordinary skill in the art to substitute the web page user interface of the Henson '383 invention for the current EBuild '01 web page, and to substitute the venting appliance data of EBuild '01 to for the computer product data of the on-line purchasing guidance invention of Henson '383. The motivation for the ordinarily skilled artisan to apply the customer configuration invention of Henson '383 to the web page of EBuild '01 is suggested by Henson '383 in which Henson '383 enumerates the benefits of providing for customer customization in an on-line store (Henson '383: col. 2, lns. 5-26). The invention of Henson' 383 discusses an application to computer appliances. However, the invention may be applied to any kind of consumer appliance, including venting appliances.

It would have been further obvious to a person having ordinary skill in the art to combine the system of Tavor '149, to the Henson '383 and EBuild '01 combination. The motivation for the ordinarily skilled artisan to combine is suggested by Tavor '149, that the mechanism of Tavor '149 would provide means to advise an on-line user/purchaser, and that this mechanism is necessary for an online user/purchaser to actually make a purchase on-line rather than simply browsing (Tavor '149, col. 1, lns. 27-50; col. 3, lns. 19-27).

The motivation for the ordinarily skilled artisan to specify that the venting parameters as specified by ASHRAE '93 be used for the venting parameters in the EBuild '01, Henson '383, and Tavor '149 combination as described above is suggested by ASHRAE '93 in which ASHRAE '93 enumerates the parameters that venting calculations are dependent upon (ASHRAE '93: p. 32.2, col. 2, lns. 5-22 note the summation of friction and dynamic losses in the

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Equation 14; p.32.28-40, note specification of shape and angle of fittings). That it is not possible to create a configuration tool for venting without using these specific parameters, the necessity of using these parameters provides motivation to combine. Further note, that ASHRAE '93 teaches "a duct fitting database, ... , which includes 228 round and rectangular fittings with the provision to include flat oval fittings, ... , with the capability to be linked to duct design programs" (ASHRAE '93: p. 32.11, col. 1, lns. 26-29). Thus, ASHRAE '93 is explicitly suggesting the linking of this information to a design program. Even further, motivation to combine is suggested by Henson '383, where he states the benefits of applying merchandising functionality to an online store (Henson '383: col. 15, lns. 46-60 and col. 16, lns. 52-63).

Claim 2:

Regarding Claim 2, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claim 1, as described above. Furthermore, Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches:

- Generating data indicating supportable attributes based on the parameters supplied by the purchaser (Henson '383: col. 7, ln. 48 to col. 8, ln. 55);
- Comparing the supportable attributes by attributes actually required by the appliance of interest (Henson '383: col. 2, ln. 61 to col. 3, ln. 11); and
- Determining the suitability of the attributes for the appliance of interest based on the results of the comparison (Henson '383: col. 18, lns. 1-9; col 18. lns. 15-24).

Moreover, ASHRAE '93 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teach:

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- Generating air flow data indicative of air flow supportable by the venting structure based on the vent parameters (ASHRAE '93: p. 32.2, col. 2, lns. 5-22 note the summation of friction and dynamic losses in the Equation 14; p.32-4, col. 2, lns. 10-20 note the specification of duct length; p.32.28-40, note specification of shape and angle of fittings);
- Comparing the air flow supportable by the venting structure relative to air flow actually required (ASHRAE '93: p. 32.19-21, Section titled HVAC Duct Design Procedures); and
- Determining the suitability of the venting structure for the appliance of interest based on the results of the comparison (ASHRAE '93: p. 32.19-21, Section titled HVAC Duct Design Procedures, see steps 4, 5, and 7 in particular).

In summary, ASHRAE '93 provides standard methods and data to calculate venting pressure, and the both frictional and dynamic pressures losses. The process to calculate the total pressure loss includes the summation of pressures losses from friction (calculated from length of venting), and pressure losses from fittings (calculated by shape and angling of fittings) (ASHRAE '93: p. 32.1-40).

Claims 3 and 14:

Regarding Claims 3 and 14, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that Tavor '149 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches indicating if attributes in the recommendation, based on parameters supplied by the purchaser, is

within a predefined acceptable range relative to at least one model for the appliance of interest (Tavor '149: col. 50, lns. 42-47).

Claims 4 and 15:

Regarding Claims 4 and 15, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that Tavor '149 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches indicating if attributes in the recommendation, based on parameters supplied by the purchaser, is within a predefined marginally acceptable range relative to at least one model for the appliance of interest (Tavor '149: col. 50, lns. 42-47).

Claims 5 and 10:

Regarding Claims 5 and 10, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that the invention of Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination also indicates if attributes in the recommendation, based on parameters supplied by the purchaser, is within a predefined unsuitable range for the appliance of interest (Henson '383: col. 17, lns. 25-34; col. 17, lns. 56-59; col. 18, lns. 1-6).

Claims 6:

Regarding Claim 6, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that the invention of Henson '383 also indicates if attributes in the recommendation, based on parameters supplied to the purchaser, is unsuitable to the appliance of interest, and further

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comprises indicating to the purchaser alternative appliance choices that would be suitable (Henson '383: col. 17, lns. 35-42).

Claims 7 and 18:

Regarding Claims 7 and 18, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that ASHRAE '93 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches vent parameters are selected from the group consisting of the length of the vent, number of turns along the vent, turn angle, and dimensions of a vent outlet cover (ASHRAE '93: ASHRAE '93: p. 32.2, col. 2, lns. 5-22 note the summation of friction and dynamic losses in the Equation 14; p.32-4, col. 2, lns. 10-20 note the specification of duct length; p.32.28-40, note specification of shape and angle of fittings).

Claims 8 and 19:

Regarding Claims 8 and 19, EBuild '01 and Henson '383 in combination teach all the limitation of Claims 1 and 11, as described above. Further note that the invention of Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination also suggests changes to the attributes that would make that attribute suitable to type appliance of interest (Henson '383: col. 17, lns. 35-42).

Claims 10 and 21:

Regarding Claims 10 and 21, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that the EBuild '01 web site, of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination combination provides for an appliance choice from a group including a drier, a

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range hood, and exhaust fan. (EBuild '01: Screen Shot 2, second, third, and seventh options in list).

Claims 12-13:

Regarding Claims 12-13, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claim 11, as described above. Furthermore, Henson '383, of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches:

- (for clm. 12) A calculating module configured to calculate data indicative of attributes supportable based on the parameters supplied by the purchaser (Henson '383: col. 7, ln. 48 to col. 8, ln. 55; note col. 8, lns. 34-44 in particular);
- (for clm. 13) A look-up table for supplying data indicative of attributes supportable in response to parameters supplied by the purchaser (Henson '383: col. 7, lns. 39-41);
- A comparator configured to compare the attributes supportable relative to attributes actually required by the appliance of interest (Henson '383: col. 2, ln. 61 to col. 3, ln. 11); and
- A module configured to determine the suitability of the attributes for the appliance of interest based on the results of the comparison (Henson '383: col. 18, lns. 1-9; col 18, lns. 15-24).

Moreover, ASHRAE '93 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches the use of airflow data and the application to venting structures ASHRAE '93: (ASHRAE '93: p. 32.2, col. 2, lns. 5-22 note the summation of friction and dynamic losses in the Equation 14; p.32-4, col. 2, lns. 10-20 note the specification of duct length; p.32.28-40,

note specification of shape and angle of fittings; and generally ASHRAE '93 chapter 32 in general).

Claim 16:

Regarding Claim 16, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teaches wherein the recommendation comprises indicating to the purchaser that the venting structure, based on the vent parameters supplied by the purchaser, is within a predefined unsuitable range for the appliance of interest (Henson '383: col. 17, lns. 35-42).

Claim 17:

Regarding Claim 17, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claims 1 and 11, as described above. Further note that Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination teach wherein the recommendation comprises indicating to the purchaser that the venting structure, based on the vent parameters supplied by the purchaser, is unsuitable to the appliance of interest, and further comprises indicating to the purchaser alternative appliance choices that would be suitable for the venting structure (Henson '383: col. 17, lns. 35-42).

Claim 22:

Regarding Claim 22, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claim 11, as described above. Further note that the invention of Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination also comprises a module configure to communicate the recommendation to the

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purchaser regarding the selection of the appliance and/or structure (Henson '383: col. 17, lns. 18-20).

6. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination, in view of U.S. Patent No. 6,134,557 issued to Freeman (hereafter Freeman '557).

Claim 9:

Regarding Claim 9, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claim 1, as described above. Furthermore, Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination, teach based on the vent parameters supplied by the purchaser, is within a predefined acceptable range relative to at least on model for the appliance of interest as described above. However, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination do not explicitly teach issuing a document certifying that the structure.

Freeman '557 teaches issuing a document certifying an structure (Freeman '557: col. 9, lns. 59-61; col. 10, lns. 52-54).

It would have been obvious to have applied the certifying method of Freeman '557 to the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination. The motivation for the ordinarily skilled artisan to combine is suggested by Freeman '557 which teaches that an ability to receive quotes and technical information on-line regarding construction materials would make "much more efficient use of the contractor's/customer's time" (Freeman '557: col. 2, lns. 20-54).

Claim 20:

Regarding Claim 20, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination teach all the limitations of Claim 11 as described above. Furthermore, Henson '383 of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination, teach based on the vent parameters supplied by the purchaser, is within a predefined acceptable range relative to at least on model for the appliance of interest as described above. However, EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 in combination do not explicitly teach issuing a document certifying that the structure.

Freeman '557 teaches issuing a document certifying an structure (Freeman '557: col. 9, lns. 59-61; col. 10, lns. 52-54).

It would have been obvious to have applied the certifying method of Freeman '557 to the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination. The motivation to combine is on the same basis as Claim 9 (*supra*).

Response to Arguments

7. Regarding Claims 1-15, 18-19, and 21-22, Applicant's arguments filed 15 March 2004 have been fully considered but they are not persuasive.

Argument 1 Applicant argues that the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 references do not teach a user friendly means to recommend a venting appliance based on the physical constraints regarding a venting structure.

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Response 1 Examiner has fully considered Applicants argument, but disagrees. Applicants argument treats the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 references individually rather than as a combination. "Test of obviousness is not whether features of secondary reference may be bodily incorporated into primary reference's structure, nor whether claimed invention is expressly suggested in any one or all of references; rather, test is what combined teachings of references would have suggested to those of ordinary skill in art." (In re Keller, Terry, and Davies, 208 USPQ1st 871, 1981). In the case of the EBuild '01, Henson '383, Tavor '149, and ASHRAE '93 combination, the "person having ordinary skill in the art" is a database and web application developer. Such a developer **faced with the problem of automating ASHRAE '93 into a venting appliance recommendation program** would have been motivated to use the general teachings of EBuild '01, Henson '383, and Tavor '149 to construct a recommendation routine since it is analogous art.

Applicant asserts that EBuild '01, Henson '383, and Tavor '149 are not analagous and goes on to make an analogy regarding that the parameters regarding the operation of a car, and that EBuild '01, Henson '383, and Tavor '149 do not teach these parameters. However, note that if EBuild '01, Henson '383, and Tavor '149 were to be combined with an automobile parameter knowledge base, then EBuild '01, Henson '383, and Tavor '149 combined with such a knowledge base would then indeed address the requirement of making recommendations based on the

parameters of a car. In an analogous fashion, the combination of EBuild '01, Henson '383, and Tavor '149, combined with the knowledge base of ASHRAE '93 addresses the requirement of making recommendations based on the physical parameters of a venting structure. In fact, ASHRAE '93 already teaches the completed venting parameter database with the data in it (ASHRAE '93: p. 32.11, col. 1, lns. 26-29) (also note that Applicant treats ASHRAE '93 information as "applicant admitted prior art" (Amendment: p.12, lns. 26-27). Indeed, ASHRAE '93 encourages use of the database to be coupled with other applications such as EBuild '01, Henson '383, and Tavor '149. Thus the ordinarily skilled artisan would have been motivated to combine EBuild '01, Henson '383, and Tavor '149 to ASHRAE '93.

Argument 2 Applicant argues impermissible hindsight was used to combine the EBuild '01, Henson '383, and Tavor '149 references.

Response 2 In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's

disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As stated in the response to Argument 1 above, a “person having ordinary skill in the art” is a database and web application developer. Just as an ordinary developer, if given an automobile parameter database and faced with the problem of making a recommendation application for cars will combine the EBuild '01, Henson '383, and Tavor '149 with the automobile parameter database, an ordinary developer given the ASHRAE '93 database and faced with the problem of making a recommendation application for venting appliances will combine the EBuild '01, Henson '383, and Tavor '149 with the ASHRAE '93 database.

Conclusion

8. Note that regarding the modified rejections of Claims 1-15, 18-19, and 21-22, Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. However, as stated above, the addition of 103(a) arguments regarding Claims 16, 17, and 20 renders this office is NON-FINAL.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J.D. Santos whose telephone number is 703-305-0707. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patrick J.D. Santos
March 29, 2004



SAFET METJAHIC
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100